

Paper No. 6
COPY MAILED

JAN 07 2003

LAW OFFICE OF THOMAS SCHNECK
P.O. BOX 2-E
SAN JOSE CA 95109-0005

In re Application of
Worfolk, Plotkin, Ravid-Rabinovitz, and Aaronson
Application No. 10/056,178
Filed: January 22, 2002
Attorney Docket No. CALY-012 CIP
For: MULTI-PATH DYNAMIC ROUTING ALGORITHM

OFFICE OF PETITIONS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)
AND
DECISION ON PETITION UNDER
37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.47(a), filed August 19, 2002.

This is also a decision on the petition under 37 CFR 1.137(b), filed August 19, 2002, to revive the above-identified application.

The petition under 37 CFR 1.47(a) is **dismissed**.

The petition under 37 CFR 1.137(b) is **moot**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a) and Renewed Petition Under 37 CFR 1.137(b)."

This above-cited application was filed without a properly executed oath or declaration. A became "Notice to File Missing Parts of Nonprovisional Application" ("Notice") was mailed on February 28, 2002, which indicated that a proper declaration under 37 CFR 1.63 was missing. The Notice set forth a shortened period for reply of two months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). The instant petition was filed on August 19, 2002.

Consideration under 37 CFR 1.47(a)

A grantable petition under 37 CFR 1.47(a) requires:

- (1) **proof that the nonsigning inventor cannot be reached** or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and,
- (4) a statement of the last known address of the nonsigning inventor.

Petitioner lacks item (1) as set forth above.

As to item (1), sufficient evidence was not provided as to the efforts undertaken by petitioner to locate the non-signing inventor. The statement offered by Kevin Nasser only indicates that several attempts were made to locate the non-signing inventor, but does not provide any detail as to what those efforts involved. Section 409.03 of the *Manual of Patent Examining Procedure* provides guidance as to what is needed to establish that an inventor cannot be located and provides, in pertinent part, as follows:

[w]here an inability to find or reach a nonsigning inventor "after diligent" effort is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence, such as internet searches, certified mail, return receipts, cover letter of instructions, telegrams, that support the finding that the nonsigning inventor could not be reached should be made a part of that statement. The steps taken to locate the whereabouts of the non-signing inventor should be included in the statement of facts. It is important that statement contain facts as opposed to conclusions.

Any renewed petition filed must include a statement and corroborative evidence as provided above.

Deposit account 19-0590 will be assessed \$65.00 for the surcharge required by the Notice to File Missing Parts of Nonprovisional Application.

Consideration under 37 CFR 1.137(b):

The petition under 37 CFR 1.137(b) is moot as the application was not abandoned at the time the petition was filed. The "Notice to File Missing Parts of Nonprovisional Application" was mailed on February 28, 2002, and allowed an extendable period for reply of two months from its mailing date. An additional five months could have been purchased to make the 37 CFR 1.47(a) petition timely. As the petition was filed on August 19, 2002, petitioner only needed a four month extension of time to make the 37 CFR 1.47(a) petition timely.

Deposit account 19-0590 will be assessed \$720.00 for the extension of time within the four month (small entity.)

As no remedy could be provided by the filing of the petition under 37 CFR 1.137(b), the petition under 37 CFR 1.137(b) is rendered moot and deposit account 19-0590 will be refunded \$1,280.00.

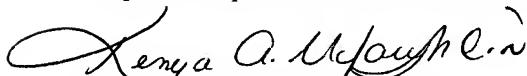
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, DC 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 South Clark Place
 Arlington, Virginia

Telephone inquiries should be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy